IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3450 OF 1989

Ananda Sadashiv Kadam
At & Post Kolam(Khurd)
Talukab Yevla,District Nasik .. Petitioner.

V/s.

1. Karbhari Vithal Pansare
since deceased
through his legal heirs

A. Smt.Chhabhubai Karbhari Pansare

B. Shri Dilip Karbhari Pansare
Residing at and Post Kolam
Taluka Yevla, District Nashik

C Shri Shivaji Karbhari Pansare

D. Alkabai Shrihari Kale
Residing at and Post Malegaon
Taluka Kopergaon,District Ahmednagar

E. Smt.Suman Anna Khokane
Residing at and Post
Aadagaon Taluka Yevala,
District Nashik

F. Vimal Bhausaheb Pawar
R/O Sawargaon,Taluka Yevala,
District Nashik

2. Namdeo Vithal Pansare,
Both of Kolam (Khurd),
Taluka Yeola, District Nashik,

3. Smt.Jijabai Vishwanath Kathe,
At & Post Savargaon,Taluka Yeola,
District Nashik .. Respondents.

Mr. G.R.Rege for the petitioner.

Mr.K.S.Bhadti i/b Mr.N.S.Shastri for respondents No.1 to 3.

CORAM : F.I. REBELLO, J.
DATED : 19TH JANUARY, 2005.

ORAL JUDGMENT

1. The petitioner-landlord has impugned the order of Revisional Authority dated 30-3-1989. By that order, the matter has been remanded back to the Trial Court for ascertaining the holding of the tenant on the tiller's day and for proper and correct calculation of the area as set out in the body of the judgment as the holding of tenant on the tiller's day is relevant. In the instant case, on the postponed date i.e. 1-4-1957 the landlord was a minor. The criticism by the learned counsel for the petitioner is after coming to the conclusion that mutation entries relied by the respondents-tenants are of no assistance to the tenant it was incumbent on the tenant to prove the holding on the postponed tiller's day. It is submitted that considering this finding it was not open to the Revisional Authority to remand the matter and to that extent the order suffers from an error of law apparent on the face of the record.

2. To appreciate the said submission, it will be necessary to refer to some relevant facts. The original tenant was one Mr.Vithal. The present

respondents are his legal representatives. The petitioner-landlord was minor on 1-4-1957. Hence, the purchase date was postponed. The Tahsildar in the enquiry under section 32P(2)(b) of B.T. and A.L. Act, 1948 was pleased to hold that the respondents-tenants on the postponed tiller's day was holding jirayat lands to the extent of 46 acres 33 gunthas as the owner and 10 acres 92 gunthas as the tenant. The total holding works out to 74 acres 5 gunthas. In the mutation record, the ceiling limit was 48 acres. It was, therefore, held that the tenant was entitled to purchase the area of 2 acres 7 gunthas from the landlord and was not entitled to possess 26 acres 5 gunthas. The tenant aggieved preferred an appeal. The Appellate Authority was pleased to dismiss the appeal by its order dated 27-11-1987. From the above fact, it is clear that it was held that the tenant is entitled to purchase 2 acres 7 gunthas.

3. On behalf of the respondents-tenants the learned counsel submits that in so far as the land of the tenant is concerned, there was a partition effected in the year 1956 and the said partition was reflected in the mutation record. In terms of mutation record, according to the learned counsel, the tenant was entitled to only 21 acres of land as owner. It is,

therefore, submitted that the findings of the Trial and Appellate Courts that the tenant possess 46 acres 33 gunthas of land as owner is perverse. The said orders of Tahsildar and Appellate Court therefrom disclose errors of law apparent on the face of the record. Under the circumstances, this court should not interfere with the impugned order of the Revisional Authority in the exercise of its revisional jurisdiction.

4. Having heard the learned counsel for both the parties, in my opinion, this would not be a fit case for this court to exercise its jurisdiction under Article 227 of the Constitution of India. The finding recorded in the order of the Tahsildar is basically contrary to the mutation entries. Some of the land is shown as belonging or ownership of the respondents-tenants when it is not so. Prima facie there is no material available to show that the lands referred in the mutation entries were the individual ownership of the respondents or they were allotted to the respondents-tenants in the partition proceeding. The said finding of the Tahsildar will have to be set aside as it is contrary to the records.The Appellate Authority had not considered that issue and proceeded to confirm the finding of the Tahsildar. In so far as

the finding of the Revisional Authority is concerned, it is based on material on record. To my mind, the finding recorded in paragraph-11 will have to be explained. The respondents-tenants apart from the documentary evidence had also led the oral evidence as to the fact of partition. The partition as reflected in the mutation record is supported by the oral evidence.It shows that there was effective partition between the parties. **Digambar Adhar Patil v. Devram Girdhar Patil (died) and another AIR 1995 Supreme Court 1728.**Considering the above, following order.

ORDER

In view of reasons discussed above,I find no cause to interfere with the final order of the Revisional Authority and consequently rule discharged. Under the circumstances there shall be no order as to costs.

(F.I.Rebello,J)